IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

MARY ANDREWS, EARVIN KYLES, DYLAN BERTUCCI, and JOHN HAMRIC, On Behalf of Themselves and All Others Similarly Situated,	)	**CLASS AND COLLECTIVE ACTION**
Plaintiffs,	)	**CASE NO. 1:14-cv-00135**
v.	)	**JUDGE HAYNES**
TRG Customer Solutions, Inc. *d/b/a* IBEX Global Solutions,	)	
Defendant.	)	

RENEWED MOTION TO SET A HEARING AND TO ORDER DEFENDANT TO SHOW CAUSE WHY IT SHOULD NOT BE SANCTIONED FOR VIOLATION OF A COURT ORDER

Pursuant to Federal Rule of Civil Procedure 16(f)(1)(C) and this Court's inherent power, Plaintiffs Mary Andrews, Earvin Kyles, Dylan Bertucci, and John Hamric ("Plaintiffs"), on behalf of themselves and all others similarly situated, file this renewed motion for an Order requiring Defendant TRG Customer Solutions, Inc. d/b/a IBEX Global Solutions ("Defendant" or "Ibex") to show cause why it should not be sanctioned for violating this Court's Order of February 13, 2015 (Doc. No. 146) (incorporating the terms of the parties' Agreement to Arbitrate Claims and Conditionally Certify Collective Action), and to set a hearing to address Defendant's violation and the proper sanction to impose.

In February 2015—fourteen months ago—the parties agreed to engage in an alternative dispute resolution process on a collective basis, rather than continuing to litigate whether Defendant's mandatory arbitration agreements were enforceable on a plaintiff-by-plaintiff basis. Based on this agreement between the parties, this Court specifically adopted and endorsed that alternative dispute resolution process in its Order of February 13, 2015. (Doc. No. 146 at 2) ("The terms of the Parties' Agreement are incorporated into this Order by reference.").

However, since entering into that Agreement, Defendant has repeatedly failed to honor its obligations under the alternative dispute resolution process ordered by this Court. Plaintiffs filed an initial show cause motion on December 10, 2015 to address Defendant's pattern of delay and its failure to meet deadlines for providing Plaintiffs with required pre-mediation discovery. (Doc. No. 283). On February 8, 2016, while that motion was still pending, Defendant produced a flash drive of responsive documents and promised to produce additional responsive documents shortly therafter, indicating a renewed commitment to preparing the case for mediation. (*See* Doc. No. 293). Accordingly, Plaintiffs agreed not to press ahead with the show cause hearing and instead resumed working with Defendant to prepare the case for mediation, to be followed, as necessary by collective arbitration.

Now, four months later, Defendant has again violated this Court's scheduling order and has made clear that it has no interest in actually mediating—despite this Court's Order that it do so. Specifically, on June 10, 2016—just one week before the parties were scheduled to mediate, Defendant's attorneys sent an email to mediator Hunter Hughes, copying Plaintiffs' counsel, informing Mr. Hughes that Defendant needed to cancel and reschedule that mediation. The ostensible reason for this eleventh-hour cancellation was Defendant's inability to mediate without taking some "additional fact discovery."

This was the first time that Defendant had ***ever*** mentioned needing pre-mediation discovery from Plaintiffs. This untimely discovery request flies in the face of this Court's February 13, 2015 Order, which plainly stated that all pre-mediation discovery be concluded within 90 days of date that the opt-in period ended. (Doc. No. 144-1 ¶ 12) (incorporated into

Court's Order at Doc. No. 146). The notice period in this case closed on May 26, 2015, meaning that the pre-mediation discovery period closed 90 days later, on August 24, 2015. **During that period, Defendant did not serve any discovery requests on Plaintiffs.**

In light of this clear discovery deadline, Defendant's last minute cancellation of mediation and its statement that it cannot mediate without first taking some as-yet-unspecified discovery is, quite simply, an act of bad faith. Moreover, it is an act of bad faith that has prejudiced both Plaintiffs and their counsel. This case has already been delayed for over a year, and Plaintiffs' counsel has spent considerable time and effort reviewing thousands of pages of pay data, constructing damages models, drafting a comprehensive mediation statement, and conferring with named plaintiffs, all in preparation for mediation.

In light of Defendant's bad faith, unreasonable delay, and its repeated failure to honor the terms of the Parties' Agreement and this Court's February 13, 2015 Order, Plaintiffs ask this Court to enter an Order requiring Defendant to show cause for why Defendant has failed to honor the deadlines established in this Court's February 13, 2015 Order. Plaintiffs also ask that the Court set a hearing as soon as possible to address this issue and to craft the appropriate sanction.

A proposed order setting forth the requested relief is attached hereto, and a supporting memorandum of law is being contemporaneously filed herewith, setting forth both the legal basis for this motion and specific relief that Plaintiffs seek.

Plaintiffs recognize that show cause motions and the imposition of judicial sanctions are disfavored by this Court, and it is only with reluctance that Plaintiffs have filed this motion. However, given that Defendant has now unreasonably and repeatedly delayed mediation far beyond the deadline set by the parties' agreement and this Court's Order—which in turn has prevented Plaintiffs from proceeding to collective arbitration—Plaintiffs respectfully seek the aid of this Court in ensuring that the resolution of this case is not delayed further.

Dated: June 14, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2016, a true and correct copy of the foregoing *Renewed Motion to Set a Hearing and to Order Defendant to Show Cause Why it Should not be Sanctioned for Violation of a Court Order* was served on the following through the Court's ECF System:

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